

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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GIORA NEEMAN,

*Plaintiff,*

*Index No.:* 2013 006289

Hon. Elaine Slobod, J.S.C.

*-against-*

**AFFIDAVIT**

**OF**

**JASON A. PITINGARO, P.E.**

HOWARD SMITH, BLACK BEAR FAMILY  
CAMPGROUND, INC. d/b/a/ BLACK BEAR  
CAMPGROUND and "JOHN DOE", said name  
being fictitious but representing the names of the  
Tenants and Guests currently occupying the premises  
known as Black Bear Campground, 197 Wheeler Road,  
Warwick, New York,

*Defendants.*

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STATE OF NEW YORK                    )  
  )     ss.  
COUNTY OF                            )

JASON A. PITINGARO, P.E, being duly sworn, deposes and says as follows:

1. I am a Vice President at KC Engineering and Land Surveying, P.C. with an office at 2142 Route 302, PO Box 42, Circleville, New York 10919, 845-361-4541. I have been retained by Plaintiff, Mr. Giora Neeman, as a consulting Civil Engineer in the above-captioned action. I submit this affidavit in support of Plaintiff's motion for a preliminary injunction.

2. I am employed by and manage KC Engineering and Land Surveying, P.C., the Orange County Office of KC Engineering and Land Surveying, P.C. I hold bachelor's and master's degrees in civil engineering. I have fourteen years of experience in subsurface sewage disposal system design and testing, including the review, approval and construction inspection of the sewage disposal system within the Town of Wallkill, Orange County New York.
3. Since 1999, the vast majority of my work has been in New York. I am familiar with state and Orange County regulations relating to subsurface sewage disposal systems, and the criteria and protocols for designing, testing and installing these systems.
4. I have reviewed relevant documents produced by both plaintiff and defendants, including data supplied by the respective parties' contractors. All of the documents that I reviewed are part of the record, and will be offered in support of this affidavit. Among the documents I consulted in preparing this affidavit are:
  - a. SPDES permit and permit application documents for wastewater disposal systems at Black Bear Campground. Prepared by Jerome L. Strauss, submitted to NYSDEC by Black Bear Campground. 1980.
  - b. SPDES permit and permit application documents for subsurface discharge of 16,000 gpd of treated sanitary waste through a septic tank with trench system. March 2008.

- c. Email correspondence by NYSDEC and Orange County Dept. of Health regarding septic system compliance status of Black Bear Campground. April – June 2013.
- d. *Letter from MJS Engineering & Land Surveying to Orange County Department of Health re Black Bear Campground SPDES #0144938.* July 27, 2013.
- e. *Letter from MJS Engineering & Land Surveying to NYSDEC re Black Bear Campground SPDES #0144938.* July 31, 2013.
- f. *Letter from MJS Engineering & Land Surveying to Orange County Department of Health re Black Bear Campground SPDES #0144938.* July 29, 2013.
- g. *Drawings of Black Bear Campground Septic Closure Plan, prepared by MJS Engineering & Land Surveying; including West Record Plan, South Record Plan, North Record Plan, and Overall Plan.* August 1, 2013.
- h. Survey map showing encroachments on portions of lands of Neeman, Town of Warwick, Orange County, NY; prepared by Schmick Surveying, Inc. February 16, 2013.
- i. Affidavit of Alan S. Lipman dated July 29, 2013.
- j. Affidavit of Michael B. Sandor dated July 28, 2013.
- k. Letter from Orange County Department of Health to Howard Smith, re Black Bear Campground. June 26, 2013.
- l. Letter from New York State Department of Environmental Conservation to Howard Smith, Black Bear Campground re. Reconnaissance Inspection and Notice of Violation. July 11, 2013.

- m.* Wastewater Facility Inspection Report – Site Visit, Black Bear Campground; prepared by New York State Department of Environmental Conservation. June 18, 2013
  - n.* Letter from Orange County Department of Health to Howard Smith, Black Bear Campground; re Campground. July 16, 2013.
  - o.* Letter from William A. Frank to Hon. Elaine Z. Slobod, JSC, Supreme Court, Orange County re Neeman v. Smith, et al. July 29, 2013.
  - p.* Letter from Alan S. Lipman to Hon. Elaine Z. Slobod, JSC, Supreme Court, Orange County re Neeman v. Smith, et al. July 30, 2013.
5. On August 18, 2013, I visited the Neeman property and the southeastern boundary of the Black Bear Campground, and viewed campground features visible from the Neeman side of the property line. The location of the septic tank which Messrs Sandor and Lipman refer to as the “mislocated” septic tank was found. There was no evidence that any leach field was ever installed to serve that tank nor was there any evidence visible with respect to which or how many campsites provided influent to that tank.
6. Subsurface Sewage Disposal Systems such as those used to treat sanitary (?) waste generated by campsites, bath houses and laundry facilities must be designed by an authorized professional as required by New York State, regardless of the review agency.
7. The design of subsurface sewage disposal systems requires the calculation of anticipated flow,  $Q$ , for each of the contributing entities. The anticipated flow is dictated by the requirements of the NYS Department of Conservation or

regional health department office. Once the anticipated flow is determined, a potential area for the construction of the sewage disposal system is chosen on site. This area must then be tested to determine whether or not it is actually viable for the installation. Testing for this purpose would include soil percolation tests within the area, typically at a depth of 24" to determine soil porosity as well as deep pit excavations to a depth of 84" to determine underlying soil characteristics and whether or not there were any limiting factors. Percolation rates can vary from 1 minute per inch to 60 minutes per inch. The percolation rate is the main factor in determining the size of the system once the flow is established.

8. In the absence of a stabilized percolation rate, no application rate for the soils can be determined and, therefore, proper sizing cannot be performed. No evidence of soil testing confirming the adequacy of the indicated leach fields has been submitted.
9. Once testing has been completed, a suitably sized system is required to be designed by a licensed professional. The design would take into account the testing results, field conditions such as topography, and adjacent wells and sewage disposal systems. No system designs appear to have been submitted to any governmental agency with respect to any septic systems after the 1980 design prepared by Strauss for the original SPDES' permit covering outfalls 1, 2, 3 and 4.
10. Normally, once a proper design is complete and installation of the septic system is begun, supervision of the construction must be performed to verify

the installation is completed correctly. There was no evidence in response to our FOIL request of any record of a review of the installations or as-builts having been provided to any governmental agency for any of the septic systems actually serving the entire campground , other than for the 1980 original SPDES' permit for the four outfalls.

11. Two of the unapproved, unengineered systems are located on or adjacent to the Neeman property. One system is a seepage pit outside the Laundry Building between it and the Neeman property boundary into which laundry effluent was discharged for an unknown number of years. The other system, according to the July 27 Sandor letter, is a septic tank and leaching chamber, which he maintains were mistakenly installed on the Neeman property. The mere "mislocation" of a septic tank on the wrong property confirms that there was no engineer involved in designing that system, and no supervision of its construction. Moreover, it appears, based on inspection of the areas involved, that no actual disposal fields to treat the effluent were ever installed.
12. At the very least, the two septic systems which discharge septic waste into the Neeman property must be closed. However, because there appear to be no actual disposal fields installed to treat the effluent, removal of the tanks and other structures themselves would not be sufficient to remedy the condition. Without the benefit of an actual leach field to disperse and treat the wastewater effluent, a concentrated point discharge to the ground will have occurred at each of these points.

13. Additionally, preliminary testing performed by a geologist (?) found that non-sanitary waste, waste other than typical domestic sanitary waste, has been disposed of through at least one of the systems. Based on the results of the samples taken from the septic tank installed on the Neeman property, additional sampling and testing, as well as monitoring of groundwater flows, needs to be performed. This will be required in order to determine the extent of areas requiring remediation.
14. Based on site drawings prepared by MJS Engineering & Land Surveying, there are 140 or more campsites for recreational vehicles on the Black Bear Campground premises. A map prepared by Black Bear Campground indicates there are actually 151 sites available for RV camping plus an additional 13 cabin sites. Amenities also include bathrooms and shower facilities, a pavilion, an office/store and a workshop. There also appears to be two laundry facilities within the campground as well, as suggested by the closure notice posted on the outside the Laundry Building adjacent to the Neeman property boundary, instructing campers to use the lower laundry. There are also additional trailers that are permanent residents and otherwise not included in this summation.
15. The base flow for the 151 sites at the DEC required hydraulic loading rate of 100 gallons per day would be 15,100 gallons. The remaining 13 cabins at the DEC required hydraulic loading rate of 50 gallons per day per camper, figuring minimally two campers per cabin would be 1,300 gallons. The identified Laundry building adjacent to the Neeman property contains six (6) washing machines. Disregarding the other laundry facility, at the DEC required hydraulic

loading rate of 580 gallons per day per machine, usage would amount to 3,480 gallons per day. The total calculable flow emanating from the campground would aggregate 19,880 gallons or 24% more than permitted by the current SPDES permits. Accordingly, the flows generated by the entirety of the campground must be considered in re-evaluating the existing SPDES Permit for the campground

16. Although not all the flow may directly tributary to Neeman's property, the above demonstrates that the campground has exceeded the requirements of their SPDES permit and not adhered to the conditions upon which the Permit was granted.
17. The rerouting of the waste lines from the so called "mislocated" septic system on the Neeman property was done without the benefit of inspection by either the Orange County Health Department or an independent engineer.
18. The waste from sites E-K was rerouted through a broken pipe, assumedly repaired, across the access road to an apparent leach field west of the sites. At the time of my August 18, 2013 visit to the common boundary of the two properties, there was little evidence of how this was actually performed and minimal site disturbance was observed in the field. Moreover, this leach field is not actually represented on the Closure plan prepared by MJS Engineering and Land Surveying, PC. The area assumed to be the field is located beneath sites 60-71 and would not be suitable for a sewage disposal field. The area is shown to have vegetated overgrowth, trees and is known to have trailer pad sites constructed of crushed shale. Leach field areas require that overgrowth and



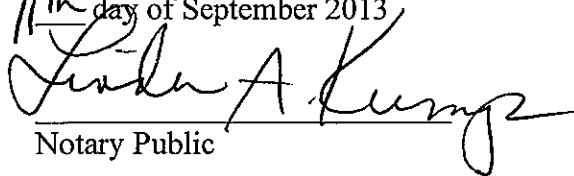
trees to be removed and that they be maintained with grass cover to assist in the dissipation and treatment of effluent via evapotranspiration.

19. Furthermore, the waste line leading from trailers A-D is also terminated in this vicinity indicating that the two systems are connected or are in very close proximity. Because these areas contain additional trailer sites ( that would require sewerage service themselves), it is at best curious why if this area was considered a viable leach field that it would be used for trailers to the east when other trailers are already occupying this area. It is fairly clear that there is not sufficient area to maintain all trailer sites in the demonstrated leaching field areas.
20. The Laundry building facility was closed and removed entirely from service on or before August 9, 2013. The stoppage of use coincided with a small area of excavation to the east of the building entrance between the Laundry facility and the Neeman property line. The insitu material was removed and replaced with shale fill material stockpiled on site. This area was reported to have been saturated and leaching directly in the vicinity of the Neeman property, which is down gradient from this apparent discharge point. It appears the Laundry facility was served by, at most, a small plastic septic tank with no actual leach field, or possibly no septic tank or leach field at all. The rerouting of the waste lines from the laundry system was done without the benefit of inspection by either the Orange County Health Department or an independent engineer. No opportunity to test or sample the area of the discharge was provided. As such,

evidence of the amount or disposition of the waste that was discharged and the effect on the underlying soil and groundwater has been destroyed.

21. As previously stated, the purpose of the leach field is to treat the liquid effluent that is discharged from a septic tank once the solids are removed.
22. At some point in the last two years, a pre-existing fence along the easterly property boundary of Smith, Black Bear Campground and the Neeman property was removed. Once removed, there was no clear demarcation of the property boundary in the field. Once this physical boundary was removed, it enabled the Campground to create additional campsites that encroach within the required fifty (50') foot minimum separation distance between any campsite and adjacent property line, Town of Warwick Zoning Sec 164-49.2 Campgrounds F1 (d).
23. Timing of the removal of the fence is crucial, in that it demonstrates that the new campsite spaces do not predate the existing Zoning Ordinances of the Town of Warwick. Furthermore, the density (Sec 164-49.2 Campgrounds B), minimum camping site area (Sec 164-49.2 Campgrounds D), and minimum space between campsites (Sec 164-49.2 Campgrounds F2) do not appear to be met for the campsites in the vicinity of the common property boundary between the campground and the Neeman property nor throughout the entire campground site.
24. Zoning is typically developed to limit densities to what is serviceable by the surrounding land as far as water and sewer capacity. In the case of the campground, the sites are served by a quasi centralized water system but do not

have the benefit of a centralized sewer system as would be required in any other application of this density.

Sworn to before me this  
11<sup>th</sup> day of September 2013  
  
Notary Public

**LINDA A. KUMP**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 01KU6273152**  
**Qualified In Orange County**  
**My Commission Expires December 03, 2016**

  
Jason A. Pitingaro